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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,944	03/08/2004	Jeffrey Held	4001497.0022	1414

4743 7590 12/16/2004

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EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/795,944

Applicant(s)

HELD ET AL.

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Examiner

Peter A. Hruskoci

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/12, 8/16, 8/20, 10/29, 11/3, 11/18, & 12/6/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 14-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In claims 14, 21, and 23 "incoming wastewater" and in claims 27-29 "raw sewage, effluent or slurry" lack clear antecedent basis in the specification as originally filed, and appear to be drawn to new matter. It is noted that the specification on pages 2-4 is drawn to the electroporation of specific sludges. Claims 15-20, 22, and 24-26 depend from the above claims.

Applicants argue that the Figure accompanying the present application illustrates that after the incoming wastewater enters the system, a portion of the incoming wastewater is directed or delivered to an electroporation station (marked "PEF"). This illustration does not appear to be shown in the Figure. It is submitted that the Figure is drawn to Wastewater (after primary treatment) delivered to a bioreactor 10, and the delivery of filtrate from the bioreactor to the electroporation station as disclosed on page 3 of the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Held et al. 6,491,820. Held et al. disclose (see col. 10 line 42 through col. 11 line 46) a method of treating a wastewater sludge containing biologically-active cellular units substantially as claimed. The claims differ from Held et al. by reciting that the method is utilized to treat incoming wastewater.

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It is submitted that the waste activated sludge treated in Held et al. is considered patentably indistinguishable from the incoming wastewater as recited in the instant claims. It would have been obvious to one skilled in the art to modify the method of Held et al. by treating the recited wastewater, to aid in providing food for the bioreactor. The use of an additional bioreactor would have been an obvious matter of process optimization to one skilled in the art, depending on the specific wastewater treated and results desired, absent a sufficient showing of unexpected results.

Applicants argue that the prior art teachings of Held et al. (820) are not prior art, but are teachings found in the 09/612,776 application, which the instant application claims priority back to. It is submitted that the instant claims include steps for directing a least a portion of incoming wastewater to an electroporating station, and electroporating the portion of incoming wastewater. It is submitted that these steps appear to lack clear antecedent basis in the above priority application.

It is noted that US 5,037,560 has been considered and initialed on the IDS dated 8/20/04.

The Chauhan Declaration dated 10/29/04 has been carefully considered but fails to overcome the above rejections. It is submitted that the KOHO application discussed in the Declaration is not considered to be pertinent to the above rejections.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter A. Hruskoci
Primary Examiner
Art Unit 1724

12/13/04